



Order under Section 21.2 of the
Statutory Powers Procedure Act
and the **Residential Tenancies Act, 2006**

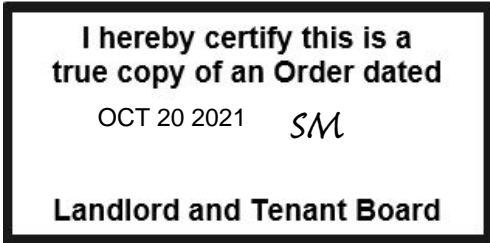
File Number: TSL-19525-21-RV

In the matter of: 3, 462 HORNER AVENUE
ETOBICOKE ON M8W2B5

Between: Charles Gerditschke

And

Angelica Donato



Landlord

Tenant

Review Order

Charles Gerditschke (the 'Landlord') applied for an order to terminate the tenancy and evict Angelica Donato (the 'Tenant') because the Tenant has been persistently late in paying the Tenant's rent. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order TSL-19525-21 issued on May 26, 2021.

On July 2, 2021, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On July 5, 2021 interim order TSL-19525-21-RV-IN was issued, staying the order issued on May 26, 2021.

The request was heard by videoconference on September 22, 2021.

The Tenant and the Landlord attended the hearing.

Determinations:

1. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings.
2. The Tenant filed the request for review, claiming that she was not reasonably able to participate in the hearing that was held on May 18, 2021.
3. The Tenant testified that she woke up late on the hearing day because on the previous night her child was sick and she worked late. The Tenant testified that she slept past 9:00 a.m. and by the time she called into the hearing it was after 10:00 a.m. The Tenant

testified that she remained on the line until approximately 10:30 a.m. The Tenant testified that she could hear another hearing underway but when no one acknowledged her and she could not see the Landlord in the hearing room, she hung up. The Tenant testified that she called the LTB at 2:00 p.m. that day and told staff what happened that morning, but she cannot recall who she spoke to. The Tenant testified that she subsequently got legal advice about her next steps and was told to file a request for review.

4. The hearing order reflects some of the Tenant's evidence in that it indicates that the Tenant joined the hearing at 10:07 a.m.; however, the order also indicates that the Tenant had already left the hearing by the time the adjudicator called the matter 10 minutes later.
5. Based on the evidence before me, I am not satisfied that the circumstances support granting the review. Even if I adopt a broad interpretation to natural justice, and the right to be heard in particular, as required by the case of *Kathryn King-Winton v. Doverhold Investments* 2008 CanLII 60708 (ON SCDC), I cannot find that the Tenant took reasonable steps to participate in the May 18th hearing.
6. Even after the Tenant signed into the hearing late, she could and should have remained in the hearing room until there was a break in the hearing that was underway and she was able to identify herself to the presiding adjudicator. The Tenant did not provide any explanation for why she did not wait on the line when it was clear that the hearing block was still ongoing. Similarly, the Tenant did not provide any explanation for why she did not sign back into the hearing later in the block or why she waited until 2:00 to call the LTB's office.
7. This is not a case where the Tenant did not receive notice of the hearing or encountered barriers to participating in the hearing that were beyond her control.
8. In the case of *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541, the Divisional Court held that, "[l]ack of diligence in dealing with court proceedings is a reason for refusing to set aside an order where a party has failed to appear." In this case, the Tenant's lack of due diligence did not constitute a serious error in the proceedings, and it did not amount to the Tenant being reasonably unable to participate in the proceedings.

It is ordered that:

1. The request to review order TSL-19525-21 issued on May 26, 2021 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on July 5, 2021 is cancelled. The stay of order TSL-19525-21 is lifted.

October 20, 2021
Date Issued



Anna Solomon
Vice Chair, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.